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June 9, 2014

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VIA ECF

Hon. Loretta A. Preska
United States District Judge
Southern District of New York
500 Pearl Street, Courtroom 12A
New York, NY 10007

Re: In re Digital Music Antitrust Litigation, No. 1:06-MD-1780

Dear Judge Preska:

I write on behalf of Defendants to ask the Court for a pre-motion conference on a deposition scheduling issue. Plaintiffs refuse to produce named plaintiff and proposed class representative Lisa Owens in either the district in which she alleged she resided at the time of the Third Consolidated Amended Complaint (the Central District of California), or the district in which she elected to bring this lawsuit. Instead, Plaintiffs insist Defendants travel to London, England to depose Ms. Owens. Defendants ask for a pre-motion conference for a motion to either compel Plaintiffs to produce Ms. Owens in either the Central District of California or the Southern District of New York, or to pay Defendants' costs for travel to London to take the deposition pursuant to Local Rule 30.1.

Ms. Owens is named in the Third Amended & Consolidated Complaint, and thus is a proposed class representative. The Court has ordered proposed class representatives to appear for deposition "in the Districts in which they reside . . ." Dkt. No. 253 at 3. Citing the text of the Order, Plaintiffs argue that Defendants must travel to London to take Ms. Owens' deposition, because that is where she now resides. But the Court's use of the capitalized term "Districts" in

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the Order plainly refers to *federal judicial districts*, as that word is used in the Federal Rules of Civil Procedure. *See, e.g.*, Fed. R. Civ. Proc. 37(b)(1)-(2). London, England is not within any such federal judicial “District[],” so Plaintiffs’ insistence that Defendants travel internationally to take this deposition is not consistent with the Order.

Plaintiffs’ demand also contravenes “the general rule”: “Ordinarily, a defendant is entitled to examine a plaintiff in the forum where plaintiff has chosen to sue.” *Seuthe v. Renwal Prod.*, 38 F.R.D. 353, 353 (S.D.N.Y. 1965). In deciding whether to deviate from this rule, courts balance “claims of prejudice and those of hardship.” *Estate of Gerasimenko v. Cape Wind Trading Co.*, 272 F.R.D. 385, 387 (S.D.N.Y. 2011). The only hardship Plaintiffs have identified is that Ms. Owens is too busy with work to make the trip. A busy work calendar has been deemed an insufficient reason to excuse a Plaintiff from appearing for deposition within the forum they chose to sue. *See Daly v. Delta Airlines, Inc.*, 90 CIV. 5700 (MEL), 1991 WL 33392 (S.D.N.Y. Mar. 7, 1991) (work conflicts “hardly constitute[] a showing of inordinate hardship”). On the other hand, requiring international travel would prejudice Defendants. Defendants have made every effort to accommodate Plaintiffs in the depositions scheduled in this case, traveling to Minnesota, Florida, Michigan, and other federal judicial districts. But the increased travel cost and time involved in international travel would exceed these reasonable accommodations.

Defendants have asked Plaintiffs to compensate them for travel to London pursuant to Local Rule 30.1 as a means of addressing this hardship and Ms. Owens’ schedule. Plaintiffs have refused. Indeed, Plaintiffs have suggested that rather than produce Ms. Owens in the United States or pay defendants’ costs for travel, they will withdraw Ms. Owens as a plaintiff in this case. As Defendants have explained several times in letters to the Court, Plaintiffs should not be permitted to pick and choose the Plaintiffs from whom Defendants may take discovery. Ms. Owens is named in the operative complaint. This discovery has been ordered from her by the Court more than once. Plaintiffs should not be permitted to avoid it on the grounds of inconvenience.

Defendants respectfully request the Court convene a pre-motion conference and either (1) order Ms. Owens to appear in this District where she brought suit, or in the Central District of California (her alleged residence in the operative complaint); or (2) order Plaintiffs to pay Defendants’ costs of travel to London to take Ms. Owens’ deposition there.

Very truly yours,

/s/ Melinda E. LeMoine

Melinda E. LeMoine

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